

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

-----:
ULTIMA SERVICES CORPORATION, :
:
Plaintiff, :
:
vs. : Case No.:
: 2:20-cv-00041-
U.S. DEPARTMENT OF AGRICULTURE, : DCLC-CRW
et al., :
:
Defendants. :
-----:

REMOTE DEPOSITION OF DANIEL CHOW

DATE: March 10, 2022
TIME: 10:06 a.m.
LOCATION: Rockville, Maryland
REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

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<p style="text-align: right;">Page 6</p> <p>1 wondering whether any of those articles were in</p> <p>2 peer-reviewed journals.</p> <p>3 A Yes, one of my works -- actually two of</p> <p>4 them: The BLS Monthly Labor Review were peer</p> <p>5 reviewed, the one on Behavioral Economics and the</p> <p>6 other on Price Measures of New Vehicles.</p> <p>7 Q Okay. And those are listed on the</p> <p>8 second page of your CV under "Publications,"</p> <p>9 correct?</p> <p>10 A Correct, correct.</p> <p>11 Q Those two articles are the first two</p> <p>12 items under that heading?</p> <p>13 A Correct.</p> <p>14 Q Okay. And the BLS Monthly Labor Review</p> <p>15 is a peer-reviewed journal, correct?</p> <p>16 A It is. Yes, it is heavily peer</p> <p>17 reviewed -- reviewed within the Bureau.</p> <p>18 Q It's a publication of the Bureau of</p> <p>19 Labor Statistics?</p> <p>20 A Correct.</p> <p>21 Q Is it a government publication?</p> <p>22 A Correct.</p>	<p style="text-align: right;">Page 8</p> <p>1 your job?</p> <p>2 A Yes.</p> <p>3 Q And what is it?</p> <p>4 A Thirteen.</p> <p>5 Q Okay. Thank you.</p> <p>6 Can you just explain in general terms</p> <p>7 what the Minority Business Development Agency</p> <p>8 does?</p> <p>9 A Yes. The Minority Business Development</p> <p>10 Agency, or MBDA, provides technical assistance to</p> <p>11 small or even medium and large minority-owned</p> <p>12 firms with access to capital, management</p> <p>13 expertise, trading. This is done through various</p> <p>14 business centers throughout the country that</p> <p>15 provide these services. And we also provide</p> <p>16 networking assistance -- assistances to various</p> <p>17 kinds of minority-owned and women-owned firms.</p> <p>18 Q Okay. I can call it the MBDA and you'll</p> <p>19 know what I'm talking about?</p> <p>20 A Correct.</p> <p>21 Q Good. All right. Amongst the things</p> <p>22 you identified as within your duties there, your</p>
<p style="text-align: right;">Page 7</p> <p>1 Q Okay. All right. Very good.</p> <p>2 Your current position with the Minority</p> <p>3 Business Development Agency, could you just state</p> <p>4 for the record what that position is?</p> <p>5 A I'm a senior economist at the U.S.</p> <p>6 Bureau of Labor -- I mean, I'm sorry, Minority</p> <p>7 Business Development Agency. I serve as the</p> <p>8 economic data concepts methodological expert for</p> <p>9 quantitative concepts and ideas as well as</p> <p>10 developing data products that support the agency's</p> <p>11 missions.</p> <p>12 Q Is that a civil service position or a</p> <p>13 political appointment?</p> <p>14 A Civil service.</p> <p>15 Q Are you in the Senior Executive Service?</p> <p>16 A No, I'm -- I am not.</p> <p>17 Q Okay. Could you tell me what your level</p> <p>18 in the government is?</p> <p>19 A I'm sorry. Can you clarify "level"?</p> <p>20 Q Yeah, that wasn't a great question, was</p> <p>21 it?</p> <p>22 Do you have a GS number associated with</p>	<p style="text-align: right;">Page 9</p> <p>1 CV states that you are involved with working</p> <p>2 groups to implement Executive Orders; is that</p> <p>3 right?</p> <p>4 A Correct.</p> <p>5 Q Okay. And which Executive Orders do you</p> <p>6 assist in the implementation of?</p> <p>7 A 13085, equity -- equity and racial</p> <p>8 inclusion. There's also working groups on</p> <p>9 Evidence Act and I believe one on learning --</p> <p>10 learning and action plans for strategic -- for</p> <p>11 strategic development of the agency.</p> <p>12 Q Okay. Let's just go through each of</p> <p>13 those.</p> <p>14 What does Executive Order 13085</p> <p>15 generally provide?</p> <p>16 A It asks each federal agency to determine</p> <p>17 if there are underserved communities or customers</p> <p>18 within their sphere of services that have not been</p> <p>19 fully addressed in past government programs and to</p> <p>20 provide a plan to address those possible gaps in</p> <p>21 the Government's provision of services to those</p> <p>22 communities.</p>

<p style="text-align: right;">Page 98</p> <p>1 and ethnicity categories.</p> <p>2 Q Okay. Did you do any analysis to</p> <p>3 determine why minority-owned firms had lower odds</p> <p>4 ratios?</p> <p>5 A Not for this study, no, I -- I did not</p> <p>6 get into that level of detail.</p> <p>7 Q Well, do you have an expert opinion as</p> <p>8 to whether you can attribute the lower ratios that</p> <p>9 you found through discrimination by a particular</p> <p>10 actor?</p> <p>11 A "By a particular actor." Can -- can you</p> <p>12 clarify that?</p> <p>13 Q Sure. Let's use the Federal Government</p> <p>14 as our particular actor.</p> <p>15 Do you have an expert opinion as to</p> <p>16 whether or not your study of lower ratios can be</p> <p>17 attributed to discrimination by the Federal</p> <p>18 Government?</p> <p>19 A No.</p> <p>20 Q Okay. And if I understand the analysis</p> <p>21 correctly, one variable that was not used was</p> <p>22 failure to bid, right?</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. ROSMAN: Why don't we take our lunch</p> <p>2 break. And Andrew is shaking his head up and</p> <p>3 down, so I'm going to go --</p> <p>4 MS. DINAN: He's pro lunch break.</p> <p>5 MR. ROSMAN: We can either come back at</p> <p>6 2:00 or just come back at 1:45 or 1:50 or 1:55,</p> <p>7 whatever people favor.</p> <p>8 MS. DINAN: I'm fine. I mean, go ahead,</p> <p>9 Andy.</p> <p>10 MR. BRANIFF: I think 1:45 is good.</p> <p>11 MR. ROSMAN: All right. 1:45 it is.</p> <p>12 Let's be back at 1:45 and we'll finish up. Thank</p> <p>13 you.</p> <p>14 MS. DINAN: Sounds good. Thank you.</p> <p>15 (Whereupon, at 12:51 p.m., a</p> <p>16 luncheon recess was taken.)</p> <p>17 * * * * *</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 99</p> <p>1 A Correct, I have nothing in here about</p> <p>2 bidding.</p> <p>3 Q Okay. And so some of these odds might</p> <p>4 be attributable to the fact that different groups</p> <p>5 bid less often or more often?</p> <p>6 A Might be attributable, yes.</p> <p>7 Q Okay. There's nothing in your analysis</p> <p>8 that would eliminate that possibility; is that</p> <p>9 right?</p> <p>10 A Correct.</p> <p>11 Q Okay.</p> <p>12 MR. ROSMAN: So, Christine, I'm not too</p> <p>13 far from being done, but if you have a significant</p> <p>14 amount of cross, then maybe we should take lunch</p> <p>15 now and then come back and finish up in an hour or</p> <p>16 so. I just wanted to take your opinion about</p> <p>17 that.</p> <p>18 MS. DINAN: I'm not sure. I need to</p> <p>19 look at my notes and I'd like to take a break</p> <p>20 regardless before we do the cross, so the question</p> <p>21 is whether you want to finish up and then take a</p> <p>22 break or you want to take a break now.</p>	<p style="text-align: right;">Page 101</p> <p>1 A F T E R N O O N S E S S I O N</p> <p>2 (1:45 p.m.)</p> <p>3 Whereupon,</p> <p>4 DANIEL CHOW</p> <p>5 was called for continued examination, and having</p> <p>6 been previously duly sworn, was examined and</p> <p>7 testified further as follows:</p> <p>8 RESUMED EXAMINATION BY COUNSEL FOR</p> <p>9 PLAINTIFF</p> <p>10 BY MR. ROSMAN:</p> <p>11 Q All right. Homestretch.</p> <p>12 Mr. Chow, I'm just going to ask you to</p> <p>13 interpret some of the numbers in your report.</p> <p>14 In Table 3 the odds ratio you identify</p> <p>15 for 8(a) firms is 2.606.</p> <p>16 Does that mean that the odds of winning</p> <p>17 a contract for an 8(a) business is more than two</p> <p>18 and-a-half times greater than for a business that</p> <p>19 is not an 8(a) business?</p> <p>20 A Well, it's greater than one and it's</p> <p>21 twice -- twice as likely, but it is a -- yes, it</p> <p>22 is a -- larger than -- larger than one, correct.</p>

<p style="text-align: right;">Page 106</p> <p>1 A No.</p> <p>2 Q Okay. Are you offering any opinion</p> <p>3 about what the cause of these different odds</p> <p>4 ratios that you identify in your tables is or are?</p> <p>5 A Offering an opinion. Well, I -- I</p> <p>6 certainly didn't look into all of the causative</p> <p>7 factors, but because the fact that I control for</p> <p>8 all these other variables and -- it's -- I -- I</p> <p>9 tend to think that there is some kind of</p> <p>10 potential -- potential discrimination as well as,</p> <p>11 you know, potential problems with how these firms</p> <p>12 are able to win contracts.</p> <p>13 So, for example, there may be -- these</p> <p>14 firms come from -- these SDBs are trying to enter</p> <p>15 a contract in a very competitive contracting</p> <p>16 situation in which they have not been able to</p> <p>17 compete well with firms that were more better</p> <p>18 prepared for instance. So to that extent there --</p> <p>19 there -- there could be some kind of --</p> <p>20 potentially some discrimination. We -- we know</p> <p>21 that discrimination does exist in -- in -- in</p> <p>22 various markets around the country in the various</p>	<p style="text-align: right;">Page 108</p> <p>1 (The reporter read the record</p> <p>2 as requested.)</p> <p>3 BY MR. ROSMAN:</p> <p>4 Q I'm not sure I understood it, so let me</p> <p>5 follow up just a little.</p> <p>6 I understand that the study didn't look</p> <p>7 at variables that were outside the study. The</p> <p>8 question is could one of those variables outside</p> <p>9 the study be the cause of some of the</p> <p>10 discrepancies or odds ratio differences that</p> <p>11 you've identified?</p> <p>12 A Okay. So if there was a factor outside</p> <p>13 the study that is causing -- that is</p> <p>14 nondiscriminatory in nature that is causing -- or</p> <p>15 impacting on the odds ratios. You're asking if</p> <p>16 that's plausible; is that right?</p> <p>17 Q Sure.</p> <p>18 A Okay. It's -- I would say that it's --</p> <p>19 it is plausible, but I can't put a -- I can't put</p> <p>20 a good exact probability estimate on that.</p> <p>21 It would be -- it would be very</p> <p>22 speculative on my part to attribute causation from</p>
<p style="text-align: right;">Page 107</p> <p>1 contracting areas.</p> <p>2 Q I guess my question is whether you're</p> <p>3 offering that as an expert opinion in this case?</p> <p>4 A As opposed to what?</p> <p>5 Q As opposed to nothing.</p> <p>6 A Oh, as opposed to nothing.</p> <p>7 Q As opposed to not offering it as an</p> <p>8 expert opinion in this case.</p> <p>9 A I'm -- I'm offering that as -- yes, I</p> <p>10 would say I'm offering that as an expert opinion.</p> <p>11 Q Okay. Could there be nondiscriminatory</p> <p>12 reasons for the estimated differences that you've</p> <p>13 identified in your tables?</p> <p>14 A Nondiscriminatory. It's possible but</p> <p>15 unlikely since we are looking at minority firms</p> <p>16 and if there were other nondiscriminatory factors</p> <p>17 I don't know how those would necessarily show up</p> <p>18 in here. That would be I think unusual because</p> <p>19 the variables are not looking at outside factors</p> <p>20 beyond the study.</p> <p>21 MR. ROSMAN: Could I just ask to have</p> <p>22 that answer read back, please.</p>	<p style="text-align: right;">Page 109</p> <p>1 those nondiscriminatory factors and what their</p> <p>2 magnitude and direction of impact are on these odd</p> <p>3 ratios.</p> <p>4 I would add that given that these firms</p> <p>5 already exist and are facing both discriminatory</p> <p>6 and nondiscriminatory factors, these results to</p> <p>7 the facts that will reflect those circumstances.</p> <p>8 MR. ROSMAN: Okay. Those are all my</p> <p>9 questions.</p> <p>10 Christine, the witness is yours.</p> <p>11 MS. DINAN: Thank you.</p> <p>12 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>13 BY MS. DINAN:</p> <p>14 Q Mr. Chow, I just have a few questions.</p> <p>15 I won't be too long.</p> <p>16 Mr. Chow, why did you do this report?</p> <p>17 A We did this report in order to provide a</p> <p>18 statistical and quantitative support towards this</p> <p>19 legal case.</p> <p>20 Q And what question did you set out to</p> <p>21 answer?</p> <p>22 A Well, we wanted to determine how and to</p>

<p style="text-align: right;">Page 110</p> <p>1 what extent our minority- and small-disadvantaged 2 firms are able to win or not win contracts. 3 Q And what did you find? 4 A We found that -- I found that SDBs that 5 are not in the 8(a) program are 30- -- about 37 6 percent less likely to win a contract compared to 7 firms in the 8(a) program, which are like twice as 8 likely to win a contract, and that there are other 9 characteristics of firms that seem to indicate 10 that there are differences in odds ratio for 11 winning contracts. 12 Q In your study you control for a number 13 of factors in your regression analysis to 14 determine whether any of those factors could 15 impact the odds of a firm winning a contract. 16 Did you control for every factor that 17 the data allowed you to control for? 18 A I controlled for as many factors as I 19 could within the design of the -- of the -- of the 20 study, yes. 21 Q In your opinion, would the results from 22 your study be consistent with the presence of</p>	<p style="text-align: right;">Page 112</p> <p>1 of these firms, so yes, they -- they are included 2 in the study. 3 Q To your knowledge, were any individual 4 firms removed from the datasets that you were 5 given by SBA either by you or by SBA because of 6 their success in bidding in the federal 7 marketplace? 8 A No. 9 Q Are you aware of any economic study or 10 data that would indicate that registered 11 minority-owned firms bid less often on contracts 12 than registered non-minority firms -- 13 A I'm not aware of any. 14 Q -- non-minority-owned firms? 15 A I'm not aware of any. 16 Q Let me look at my notes. Just a moment. 17 Just back to what you were saying a 18 moment ago about the findings, when you indicated 19 that certain firms -- there were 37 percent less 20 likely -- had 37 percent less likely odds of 21 winning a contract as compared to other firms, 22 that was all firms with similar characteristics,</p>
<p style="text-align: right;">Page 111</p> <p>1 discrimination? 2 A Yes, in my expert opinion it is 3 consistent, yes. 4 Q And why is that? 5 A Well, again, we're looking at minority 6 firms and I looked at all of the variables that 7 are relevant in terms of, you know, determining 8 the differential impact on the odds of winning. 9 We're looking at minority firms and I can't 10 think of -- I can't think of any nondiscriminatory 11 factors. And we know that discrimination exists 12 in various workplaces and marketplaces, so looking 13 at the fact that if an SDB is not in the 8(a) 14 program versus a firm that is in the 8(a) program, 15 we see a statistically significant difference 16 between those two. So I -- I tend to look at that 17 as being consistent with some form of 18 discrimination. 19 Q And that was after controlling for 20 certain nondiscriminatory factors like age and 21 gross receipts and things like that, correct? 22 A Correct, those -- those factors are part</p>	<p style="text-align: right;">Page 113</p> <p>1 correct? 2 A Correct. 3 Q And that was not just in comparison to 4 firms in the 8(a) program; is that right? 5 A Correct. 6 MS. DINAN: I believe that is all that I 7 have. Let me just double check. 8 No, I have no further questions thank 9 you. 10 MR. ROSMAN: Just two quick follow-up 11 questions. 12 FURTHER EXAMINATION BY COUNSEL FOR 13 PLAINTIFF 14 BY MR. ROSMAN: 15 Q You testified a moment ago that you 16 thought the results were consistent with 17 discrimination. 18 Does this mean that discrimination 19 cannot be eliminated as a possible cause for the 20 discrepancies that you found? 21 A I would -- cannot be eliminated as -- I 22 would say so, yes.</p>